

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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United States of America,	)	
	)	
Plaintiff,	)	
v.	)	No. 2:12-cv-02289-JTF-tmp
	)	
Five Million Nine Hundred	)	
Eighty-Eight Thousand	)	
Thirty-One Dollars Thirty-	)	
Three Cents, et al.,	)	
	)	
Defendants.	)	

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ORDER ADOPTING THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION  
AND DENYING DEFENDANTS’ MOTION TO STRIKE AND TO DISMISS

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Before the Court is Defendants’ (claimants) Motion to Strike the Affidavit of Parris Quon and to Dismiss the Verified Complaint of Forfeiture pursuant to Fed. R. Civ. P. 12(b)(6) filed on June 11, 2012. (DE #12). The Plaintiff failed to file a timely response to Defendants’ Motion to Strike and to Dismiss. On June 25, 2012, Defendants’ Motion to Strike was referred to the Magistrate Judge for determination pursuant to 28 U.S.C. § 636(b)(1).<sup>1</sup> (DE #42).

On August 2, 2012, the Magistrate ordered Plaintiff to show cause within eleven (11) days of the entry of the show cause order, why Defendants’ Motion to Strike and Motion to Dismiss should not be granted. (DE #47). On August 10, 2012, Plaintiff filed a brief response summarizing its opposition to Defendants’ Motion to Strike and Motion to Dismiss asking for an additional ten (10) days in which to file a more detailed response. (DE #50). On August 14, 2012, the Magistrate Judge granted the Plaintiff’s request for more time, DE #51, and Plaintiff

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<sup>1</sup> This case was initially assigned to the Honorable Samuel H. Mays, Jr. on April 17, 2012. DE #3. The matter was reassigned to this Court on August 6, 2012 pursuant to Administrative Order No. 2012-16.

subsequently filed a complete response to Defendants' Motion to Strike and Motion to Dismiss was filed on August 20, 2012. (DE #54). The Magistrate Judge issued his report and recommendation that the Motion to Strike and the Motion to Dismiss be denied on November 1, 2012. (DE #59). No objections were filed by the Defendants within fourteen (14) days as required by 28 U.S.C. §636(b)(1)(C).<sup>2</sup>

Adopting the Magistrate's proposed findings of fact, the Court also agrees with the Magistrate Judge's proposed conclusions of law. In his report and recommendation the Magistrate Judge determined that: 1) the claimant's objections to Agent Quon's affidavit do not satisfy Fed. R. Civ. P. 12(f) as redundant, immaterial, impertinent or scandalous; 2) the forfeiture complaint has satisfied Supplemental Rule E(2)(a) by stating the circumstances from which the claim arises with such particularity that the defendants are able to respond; 3) the complaint satisfies Supplement Rule G(2)(f) because it set forth facts with particularity to allow a reasonable belief the government would be able to meet its burden at trial; and finally 4) according to 18 U.S.C. §983(c)(1), ("CAFRA"), a complaint should not be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) even if the complaint does not offer all the facts to succeed during the forfeiture proceeding.

After reviewing the Magistrate Judge's report and recommendation and the entire record, the Court ADOPTS the Magistrate Judge's report and recommendation and DENIES the Defendants' Motion to Strike and DENIES the Defendants' Motion to Dismiss for failure to state a claim for which relief may be granted pursuant to Fed. Rule Civ. P. 12(b)(6).

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<sup>2</sup> During a scheduling conference conducted by this Court on November 19, 2012, the Plaintiff made an *ore tenus* motion to stay the case. DE #60. The Court entered an Order Granting the Government's *ore tenus* motion to stay the proceedings until the conclusion of a related criminal matter pending against all of the named parties before then Chief Judge Jon P. McCalla, Case No. 12-cr-20284-JPM, United States v. Wayne David McAlpin, Jr. et al. Currently, the case is closed as to all defendants other than one defendant, Wayne David McAlpin, who remains to be sentenced in that matter on March 23, 2013. DE #180.

**IT IS SO ORDERED** this 28th day of March, 2014.

*s/John T. Fowlkes, Jr.*  
JOHN T. FOWLKES, JR.  
UNITED STATES DISTRICT JUDGE